

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

THOMAS KELLEY,	}	
	}	
Plaintiff	}	
	}	CIVIL ACTION NO.
vs.	}	
	}	98-AR-0004-S
LIBERTY MUTUAL INSURANCE	}	
COMPANY,	}	
	}	
Defendant	}	

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U.S. DISTRICT COURT
N.D. OF ALABAMA

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MEMORANDUM OPINION

Liberty Mutual Insurance Company, defendant in the above-entitled action, removed the case to this court from the state court on the basis of diversity, filed a motion to dismiss, asked for oral argument but did not appear when its motion was called for hearing at the court's regular motion docket on January 16, 1998. Plaintiff, Thomas Kelly, was present by counsel and orally moved to remand the case, pointing out that the state courts have exclusive jurisdiction over all cases arising out of workers' compensation statutes. 28 U.S.C. § 1445(c).

Paragraph 2 of the complaint specifically invokes Alabama's Workers' Compensation Act, saying: "This action is brought pursuant to Alabama Workers' Compensation Act, section 25-5-11." Liberty Mutual's answer to paragraph 2 says: "Admitted." This court has consistently held that the "arising under" language in 28 U.S.C.

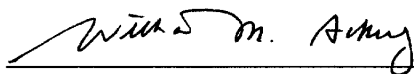
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§ 1445(c) is to be construed broadly against removal jurisdiction. In Liberty Mutual's answer, which includes a motion to dismiss pursuant to Rule 12(b)(6), F.R.Civ.P., Liberty Mutual as its Sixth Defense says: "The Defendant is entitled to the immunity provided by the Alabama Workers' Compensation Act." Liberty Mutual, in effect, concedes that Alabama Workers' Compensation Act is implicated.

At the motion docket the court orally granted plaintiff's oral motion to remand. Shortly thereafter, defendant's counsel ascertained what had transpired and has filed two papers: (1) a motion to stay the entry of a written order of remand; and (2) a motion for leave to withdraw the defense based on alleged immunity under Alabama's Workers' Compensation Act.

An appropriate, separate order remanding the case will be entered.

DONE this 20th day of January, 1998.



WILLIAM M. ACKER, JR.
UNITED STATES DISTRICT JUDGE